



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

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MEMORANDUM

OFFICE OF  
THE ADMINISTRATOR

SUBJECT: Indian Policy Implementation Guidance

FROM: Alvin L. Alm *Alvin L. Alm*  
Deputy Administrator

TO: Assistant Administrators  
Regional Administrators  
General Counsel

INTRODUCTION

The Administrator has signed the attached EPA Indian Policy. This document sets forth the broad principles that will guide the Agency in its relations with American Indian Tribal Governments and in the administration of EPA programs on Indian reservation lands.

This Policy concerns more than one hundred federally-recognized Tribal Governments and the environment of a geographical area that is larger than the combined area of the States of Maryland, New Jersey, Connecticut, Massachusetts, Vermont, New Hampshire and Maine. It is an important sector of the country, and constitutes the remaining lands of America's first stewards of the environment, the American Indian Tribes.

The Policy places a strong emphasis on incorporating Tribal Governments into the operation and management of EPA's delegable programs. This concept is based on the President's Federal Indian Policy published on January 24, 1983 and the analysis, recommendations and Agency input to the EPA Indian Work Group's Discussion Paper, Administration of Environmental Programs on American Indian Reservations (July 1983).

TIMING AND SCOPE

Because of the importance of the reservation environments, we must begin immediately to incorporate the principles of EPA's Indian Policy into the conduct of our everyday business. Our established operating procedures (including long-range budgetary and operational planning activities) have not consistently focused on the proper role of Tribal Governments or the special legal and political problems of program management on Indian lands. As a result, it will require a phased and sustained effort over time to fully implement the principles of the Policy and to take the steps outlined in this Guidance.

Some Regions and Program Offices have already been individual start along the lines of the Policy and Guidance. I believe that a clear Agency-wide policy will enable all programs to build on these efforts so that, within the limits of our legal and budgetary constraints, the Agency as a whole can make respectable progress in the next year.

As we begin the first year of operations under the Indian Policy, we cannot expect to solve all of the problems we will face in administering programs under the unique legal and political circumstances presented by Indian reservations. We can, however, concentrate on specific priority problems and issues and proceed to address these systematically and carefully in the first year. With this general emphasis, I believe that we can make respectable progress and establish good precedents for working effectively with Tribes. By working within a manageable scope and pace, we can develop a coordinated base which can be expanded, and, as appropriate, accelerated in the second and third years of operations under the Policy.

In addition to routine application of the Policy and this Guidance in the conduct of our everyday business, the first year's implementation effort will emphasize concentrated work on a discrete number of representative problems through cooperative programs or pilot projects. In the Regions, this effort should include the identification and initiation of work on priority Tribal projects. At Headquarters, it should involve the resolution of the legal, policy and procedural problems which hamper our ability to implement the kinds of projects identified by the Regions.

The Indian Work Group (IWG), which is chaired by the Director of the Office of Federal Activities and composed of representatives of key regional and headquarters offices, will facilitate and coordinate these efforts. The IWG will begin immediately to help identify the specific projects which may be ripe for implementation and the problems needing resolution in the first year.

Because we are starting in "mid-stream," the implementation effort will necessarily require some contribution of personnel time and funds. While no one program will be affected in a major fashion, almost all Agency programs are affected to some degree. I do not expect the investment in projects on Indian Lands to cause any serious restriction in the States' funding support or in their ability to function effectively. To preserve the flexibility of each Region and each program, we have not set a target for allocation of FY 85 funds. I am confident, however, that Regions and program offices can, through readjustment of existing resources, demonstrate significant and credible progress in the implementation of EPA's Policy in the next year.

ACTION

Subject to these constraints, Regions and program managers should now initiate actions to implement the principles of the Indian Policy. The eight categories set forth below will direct our initial implementation activities. Further guidance will be provided by the Assistant Administrator for External Affairs as experience indicates a need for such guidance.

**1. THE ASSISTANT ADMINISTRATOR FOR EXTERNAL AFFAIRS WILL SERVE AS LEAD AGENCY CLEARINGHOUSE AND COORDINATOR FOR INDIAN POLICY MATTERS.**

This responsibility will include coordinating the development of appropriate Agency guidelines pertaining to Indian issues, the implementation of the Indian Policy and this Guidance. In this effort the Assistant Administrator for External Affairs will rely upon the assistance and support of the EPA Indian Work Group.

**2. THE INDIAN WORK GROUP (IWG) WILL ASSIST AND SUPPORT THE ASSISTANT ADMINISTRATOR FOR EXTERNAL AFFAIRS IN DEVELOPING AND RECOMMENDING DETAILED GUIDANCE AS NEEDED ON INDIAN POLICY AND IMPLEMENTATION MATTERS. ASSISTANT ADMINISTRATORS, REGIONAL ADMINISTRATORS AND THE GENERAL COUNSEL SHOULD DESIGNATE APPROPRIATE REPRESENTATIVES TO THE INDIAN WORK GROUP AND PROVIDE THEM WITH ADEQUATE TIME AND RESOURCES NEEDED TO CARRY OUT THE IWG'S RESPONSIBILITIES UNDER THE DIRECTION OF THE ASSISTANT ADMINISTRATOR FOR EXTERNAL AFFAIRS.**

The Indian Work Group, (IWG) chaired by the Director of the Office of Federal Activities, will be an important entity for consolidating the experience and advice of the key Assistant and Regional Administrators on Indian Policy matters. It will perform the following functions: identify specific legal, policy, and procedural impediments to working directly with Tribes on reservation problems; help develop appropriate guidance for overcoming such impediments; recommend opportunities for implementation of appropriate programs or pilot projects; and perform other services in support of Agency managers in implementing the Indian Policy.

The initial task of the IWG will be to develop recommendations and suggest priorities for specific opportunities for program implementation in the first year of operations under the Indian Policy and this Guidance.

To accomplish this, the General Counsel and each Regional and Assistant Administrator must be actively represented on the IWG by a staff member authorized to speak for his or her office. Further, the designated representative(s) should be afforded the time and resources, including travel, needed to provide significant staff support to the work of the IWG.

3. ASSISTANT AND REGIONAL ADMINISTRATORS SHOULD UNDERTAKE ACTIVE OUTREACH AND LIAISON WITH TRIBES, PROVIDING ADEQUATE INFORMATION TO ALLOW THEM TO WORK WITH US IN AN INFORMED WAY.

In the first thirteen years of the Agency's existence, we have worked hard to establish working relationships with State Governments, providing background information and sufficient interpretation and explanations to enable them to work effectively with us in the development of cooperative State programs under our various statutes. In a similar manner, EPA managers should try to establish direct, face-to-face contact (preferably on the reservation) with Tribal Government officials. This liaison is essential to understanding Tribal needs, perspectives and priorities. It will also foster Tribal understanding of EPA's programs and procedures needed to deal effectively with us.

4. ASSISTANT AND REGIONAL ADMINISTRATORS SHOULD ALLOCATE RESOURCES TO MEET TRIBAL NEEDS, WITHIN THE CONSTRAINTS IMPOSED BY COMPETING PRIORITIES AND BY OUR LEGAL AUTHORITY.

As Tribes move to assume responsibilities similar to those borne by EPA or State Governments, an appropriate block of funds must be set aside to support reservation abatement, control and compliance activities.

Because we want to begin to implement the Indian Policy now, we cannot wait until FY 87 to formally budget for programs on Indian lands. Accordingly, for many programs, funds for initial Indian projects in FY 85 and FY 86 will need to come from resources currently planned for support to State and State-managed programs meeting similar objectives. As I stated earlier, we do not expect to resolve all problems and address all environmental needs on reservations immediately. However, we can make a significant beginning without unduly restricting our ability to fund ongoing programs.

I am asking each Assistant Administrator and Regional Administrator to take measures within his or her discretion and authority to provide sufficient staff time and grant funds to allow the Agency to initiate projects on Indian lands in FY 85 and FY 86 that will constitute a respectable step towards implementation of the Indian Policy.

5. ASSISTANT AND REGIONAL ADMINISTRATORS, WITH LEGAL SUPPORT PROVIDED BY THE GENERAL COUNSEL, SHOULD ASSIST TRIBAL GOVERNMENTS IN PROGRAM DEVELOPMENT AS THEY HAVE DONE FOR THE STATES.

The Agency has provided extensive staff work and assistance to State Governments over the years in the development of environmental programs and program management capabilities. This assistance has become a routine aspect of Federal/State relations, enabling and expediting the States' assumption of delegable programs under the various EPA statutes. This "front end" investment has promoted cooperation and increased State involvement in the regulatory process.

As the Agency begins to deal with Tribal Governments as partners in reservation environmental programming, we will find a similar need for EPA assistance. Many Regional and program personnel have extensive experience in working with States on program design and development; their expertise should be used to assist Tribal Governments where needed.

**6. ASSISTANT ADMINISTRATORS, REGIONAL ADMINISTRATORS AND THE GENERAL COUNSEL SHOULD TAKE ACTIVE STEPS TO ALLOW TRIBES TO PROVIDE INFORMED INPUT INTO EPA'S DECISION-MAKING AND PROGRAM MANAGEMENT ACTIVITIES WHICH AFFECT RESERVATION ENVIRONMENTS.**

Where EPA manages Federal programs and/or makes decisions relating directly or indirectly to reservation environments, full consideration and weight should be given to the public policies, priorities and concerns of the affected Indian Tribes as expressed through their Tribal Governments. Agency managers should make a special effort to inform Tribes of EPA decisions and activities which can affect their reservations and solicit their input as we have done with State Governments. Where necessary, this should include providing the necessary information, explanation and/or briefings needed to foster the informed participation of Tribal Governments in the Agency's standard-setting and policy-making activities.

**7. ASSISTANT AND REGIONAL ADMINISTRATORS SHOULD, TO THE MAXIMUM FEASIBLE EXTENT, INCORPORATE TRIBAL CONCERNS, NEEDS AND PREFERENCES INTO EPA'S POLICY DECISIONS AND PROGRAM MANAGEMENT ACTIVITIES AFFECTING RESERVATIONS.**

It has been EPA's practice to seek out and accord special consideration to local interests and concerns, within the limits allowed by our statutory mandate and nationally established criteria and standards. Consistent with the Federal and Agency policy to recognize Tribal Governments as the primary voice for expressing public policy on reservations, EPA managers should, within the limits of their flexibility, seek and utilize Tribal input and preferences in those situations where we have traditionally utilized State or local input.

We recognize that conflicts in policy, priority or preference may arise between States and Tribes as it does between neighboring States. As in the case of conflicts between neighboring States, EPA will encourage early communication and cooperation between Tribal and State Governments to avoid and resolve such issues. This is not intended to lend Federal support to any one party in its dealings with the other. Rather, it recognizes that in the field of environmental regulation, problems are often shared and the principle of comity between equals often serves the interests of both.

Several of the environmental statutes include a conflict resolution mechanism which enables EPA to use its good offices to balance and resolve the conflict. These procedures can be applied to conflicts between Tribal and State Governments that cannot otherwise be resolved. EPA can play a moderating role by following the conflict resolution principles set by the statute, the Federal trust responsibility and the EPA Indian Policy.

8. ASSISTANT ADMINISTRATORS, REGIONAL ADMINISTRATORS AND THE GENERAL COUNSEL SHOULD WORK COOPERATIVELY WITH TRIBAL GOVERNMENTS TO ACHIEVE COMPLIANCE WITH ENVIRONMENTAL STATUTES AND REGULATIONS ON INDIAN RESERVATIONS, CONSISTENT WITH THE PRINCIPLE OF INDIAN SELF-GOVERNMENT.

The EPA Indian Policy recognizes Tribal Governments as the key governments having responsibility for matters affecting the health and welfare of the Tribe. Accordingly, where tribally owned or managed facilities do not meet Federally established standards, the Agency will endeavor to work with the Tribal leadership to enable the Tribe to achieve compliance. Where reservation facilities are clearly owned or managed by private parties and there is no substantial Tribal interest or control involved, the Agency will endeavor to act in cooperation with the affected Tribal Government, but will otherwise respond to noncompliance by private parties on Indian reservations as we do to noncompliance by the private sector off-reservation.

Actions to enable and ensure compliance by Tribal facilities with Federal statutes and regulations include providing consultation and technical support to Tribal leaders and managers concerning the impacts of noncompliance on Tribal health and the reservation environment and steps needed to achieve such compliance. As appropriate, EPA may also develop compliance agreements with Tribal Governments and work cooperatively with other Federal agencies to assist Tribes in meeting Federal standards.

Because of the unique legal and political status of Indian Tribes in the Federal System, direct EPA actions against Tribal facilities through the judicial or administrative process will be considered where the Agency determines, in its judgment, that: (1) a significant threat to human health or the environment exists, (2) such action would reasonably be expected to achieve effective results in a timely manner, and (3) the Federal Government cannot utilize other alternatives to correct the problem in a timely fashion. Regional Administrators proposing to initiate such action should first obtain concurrence from the Assistant Administrator for Enforcement and Compliance Monitoring, who will act in consultation with the Assistant Administrator for External Affairs and the General Counsel. In emergency situations, the Regional Administrator may issue emergency Temporary Restraining Orders, provided that the appropriate procedures set forth in Agency delegations for such actions are followed.

9. ASSISTANT ADMINISTRATORS, REGIONAL ADMINISTRATORS AND THE GENERAL COUNSEL SHOULD BEGIN TO FACTOR INDIAN POLICY GOALS INTO THEIR LONG-RANGE PLANNING AND PROGRAM MANAGEMENT ACTIVITIES, INCLUDING BUDGET, OPERATING GUIDANCE, MANAGEMENT ACCOUNTABILITY SYSTEMS AND PERFORMANCE STANDARDS.

In order to carry out the principles of the EPA Indian Policy and work effectively with Tribal Governments on a long-range basis, it will be necessary to institutionalize the Agency's policy goals in the management systems that regulate Agency behavior. Where we have systematically incorporated State needs, concerns and cooperative roles into our budget, Operating Guidance, management accountability systems and performance standards, we must now begin to factor the Agency's Indian Policy goals into these same procedures and activities.

Agency managers should begin to consider Indian reservations and Tribes when conducting routine planning and management activities or carrying out special policy analysis activities. In addition, the IWS, operating under the direction of the Assistant Administrator for External Affairs and with assistance from the Assistant Administrator for Policy, Planning and Evaluation, will identify and recommend specific steps to be taken to ensure that Indian Policy goals are effectively incorporated and institutionalized in the Agency's procedures and operations.

Attachment